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HOUSE BILL 857

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Dennis J. Kintigh

AN ACT

RELATING TO MAGISTRATE COURTS; PROVIDING A RIGHT OF APPEAL FROM
MAGISTRATE COURT TO DISTRICT COURT OF CERTAIN ORDERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of Chapter 35, Article 13 NMSA
1978 is enacted to read:

"~~[NEW MATERIAL]~~ APPEALS FROM MAGISTRATE COURT IN DWI
CASES.--

A. In any criminal proceeding in magistrate court,
an appeal may be taken to the district court within ten days
from a decision or order of the magistrate court suppressing or
excluding evidence or requiring the return of seized property,
if the attorney certifies to the district court that the appeal
is not taken for purpose of delay and that the evidence
constitutes substantial proof of a fact that is material in the

underscored material = new
[bracketed material] = delete

underscored material = new
[~~bracketed material~~] = delete

1 proceeding. In an appeal under this section, the district
2 court shall hold an evidentiary hearing of the facts related to
3 the issue on appeal.

4 B. No appeal shall be taken by the state when the
5 double jeopardy clause of the United States constitution or the
6 constitution of the state of New Mexico prohibits further
7 prosecution."

8 Section 2. EFFECTIVE DATE.--The effective date of the
9 provisions of this act is July 1, 2009.